

REMARKS/ARGUMENTS

The Examiner has delineated the following inventions as being patentably distinct:

Group I: Claims 1-8, drawn to a hair cosmetizer which comprises a cosmetic material, an oily material, and a water soluble organic medium dispersed in water; and

Group II: Claims 9 and 10, drawn to a method of making hair cosmetizer which comprises cosmetic material, oily material, a water soluble organic medium dispersed in water, a material, and a powdery water soluble organic medium.

Applicants provisionally elect, with traverse Group I Claims 1-8, drawn to a hair cosmetizer which comprises a cosmetic material, an oily material, and a water soluble organic medium dispersed in water.

Restriction is only proper if the claims of the restricted groups are patentably distinct, and there would be a serious burden placed on the Examiner if restriction is not required (M.P.E.P. § 803). The burden of proof is on the Examiner to provide reasons and/or examples to support any conclusions in regard to patentable distinction. Moreover, when making a lack of unit of invention in a national stage application, the Examiner has the burden of explaining why each group lacks unity with each other (i.e., why there is no single inventive concept specifically describing the unique special technical feature in each group (M.P.E.P. § 1893.03(d)).

The Examiner asserts that Groups I and II do not relate to a single general inventive concept under PCT Rule 13.1 and 13.2 because they lack the same corresponding special technical feature. The Examiner, however, has not considered that the claims in each group are considered related inventions under 37 C.F.R. § 1.475(b) in which the inventions are considered to have unity of inventions. Applicants submit that while PCT Rules 13.1 and

13.2 are applicable, 37 C.F.R. § 1.475(b) provides in relevant part that “a national stage application containing claims to different categories of invention will be considered to have unity of invention if the claims are drawn to a product and a process for the preparation of said product.” In this instant application the product prepared by Group II is dissolved or is dispersed in water prior to applying to hair.

Applicants respectfully traverse on the grounds that the Office has not shown that a burden exists in searching the entire application.

Further, the M.P.E.P. § 803 states as follows:

“If the search and examination of an entire application can be made without a serious burden, the Examiner must examine it on its merits, even though it includes claims to distinct or independent inventions.”

Applicants submit that a search of all the claims would not constitute a serious burden on the Office. In fact, the International Search Authority has searched all of the claims together. As the Office has not shown any evidence that a restriction should now be required when the International Preliminary Examination Report did not, the restriction is believed to be improper.

For the reasons set forth above, Applicants request that the Restriction Requirement be withdrawn.

Applicants further request that if the invention of Group I is found allowable, withdrawn Group II which includes the limitations of the allowable claims be rejoined (M.P.E.P. § 821.04).

Applicants respectfully submit that the above-identified application is now in condition for examination on the merits, and an early notice of such action is earnestly solicited.

Respectfully submitted,

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